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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 VINCENT MARTINEZ,
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13 Plaintiff,
14 v.
15 ANDREW SAUL, Commissioner of
16 Social Security,
17 Defendant.
18

Case No.: 15-cv-1994-BTM-BGS

**ORDER GRANTING MOTION FOR
ATTORNEY'S FEES PURSUANT
TO 42 U.S.C. § 406(b)**

[ECF No. 17]

19 Plaintiff's attorney, Lawrence D. Rohlfing ("Counsel"), moves for an award of
20 attorney's fees pursuant to 42 U.S.C. § 406(b). Counsel asks the Court to award
21 \$30,000.00 in attorney's fees from Plaintiff's recovery of \$173,585.00 in past-due
22 social security benefits, and to order Counsel to refund Plaintiff the \$3,414.00 in
23 fees Plaintiff has already paid under the Equal Access to Justice Act ("EAJA"). The
24 Social Security Administration Commissioner filed a brief as a "trustee" but takes
25 no position on the instant motion. Plaintiff has not responded to Counsel's request.
26 For the reasons set forth below, the Court **GRANTS** Counsel's motion for
27 attorney's fees.
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On remand, the Administrative Law Judge (ALJ) found Plaintiff was disabled since September 1, 2010 and awarded Plaintiff past-due disability benefits. ECF No. 17-3. The Notice of Change in Benefits issued on October 6, 2018 informed Plaintiff that he was entitled to monthly benefits from February 2011 onward, and that \$43,396.25 of those past-due benefits would be withheld in the event that Counsel requested attorney's fees for work performed before this Court. ECF No. 17-4.

STANDARD

42 U.S.C. § 406(b)(1)(A) provides:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment

42 U.S.C. § 406(b)(1)(A) provides:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment

1 When evaluating a request for a contingent fee under § 406(b), courts must
2 first look to the contingent-fee agreement, then test it for reasonableness.
3 *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002). The following factors, alone or
4 in combination, may warrant a reduction: (1) the result achieved; (2) “substandard
5 representation”; (3) delay by counsel; and (4) whether “the benefits are large in
6 comparison to the amount of time counsel spent on the case,” thereby resulting in
7 a windfall. *Id.* at 805; see also *Crawford v. Astrue*, 586 F.3d 1142, 1151–53 (9th
8 Cir. 2009) (en banc). Courts may request “a record of the hours spent representing
9 the claimant and a statement of the lawyer’s normal hourly billing charge for
10 noncontingent fee cases,” to aid in assessing a fee’s reasonableness. *Gisbrecht*,
11 535 U.S. at 808; *Crawford*, 586 F.3d at 1151. Counsel bears the burden of
12 establishing that the requested fee is reasonable. *Crawford*, 586 F.3d at 1149.

13 DISCUSSION

14 Plaintiff signed a 25% contingent fee agreement, the maximum allowed by
15 Section 406(b). ECF No. 17-2. Nothing in the record suggests that the agreement
16 is invalid. Turning to the reasonableness of the requested \$30,000.00 award, the
17 Court finds that the result was successful and that there is no evidence of
18 substandard representation or delay. The only issue before the Court is the fourth
19 *Gisbrecht* factor, *i.e.*, whether “the benefits are large in comparison to the amount
20 of time [C]ounsel spent on the case” thereby resulting in a windfall. *Gisbrecht*, 535
21 U.S. at 805.

22 Counsel submits that his office expended 20.15 hours of attorney and
23 paralegal time, 15.85 hours and 4.3 hours respectively, on the case. ECF No. 17-
24 1, at 8 ¶ 5; ECF No. 17-5. Counsel requests \$30,000.00, or approximately 17.28%
25 of the Plaintiff’s recovered past-due social security benefits, which is less than the
26 maximum \$43,396.25 that the Commissioner withheld pursuant to 42 U.S.C.
27 406(b). See ECF No. 17-4, at 2. Counsel did not submit his typical non-contingent
28 fee hourly billing rate, but presented evidence that the 95th percentile hourly rate

1 for all attorneys between 2015 and 2016 was \$725 and that he has practiced social
2 security law since 1985. ECF No. 17-1, at 9 ¶¶ 7-8, 8; ECF Nos. 17-6, 17-7. The
3 effective blended attorney/paralegal hourly rate for work performed here is
4 approximately \$1,488.83. Counsel asserts that this hypothetical rate is
5 proportionate to the time spent and, given the results achieved, the relevant market
6 hourly rates, and the risks inherent in contingent-fee arrangements, is not a
7 windfall. ECF No. 17, at 2-6.

8 Given the primacy of lawful attorney-client fee agreements, the amount and
9 complexity of the work performed, the risks assumed, the results achieved,
10 Counsel's experience and efficiency, the effective hourly rates courts have
11 previously approved in similar cases, and the fact that the requested fees are
12 significantly lower than the fees bargained-for in the contingent fee agreement and
13 not excessively large in relation to the benefits achieved, the Court concludes that
14 Counsel has carried his burden to demonstrate that a fee award of \$30,000.00
15 would be reasonable on the facts of this case. See *Crawford*, 586 F.3d at 1151-
16 52. Accordingly, the Court will grant Counsel's present motion and order that the
17 attorney's fee award of \$30,000.00 be paid out of Plaintiff's past-due benefits that
18 have been withheld by Defendant. Since attorney's fees have also been awarded
19 to Counsel pursuant to the EAJA, however, the earlier EAJA attorney's fee award
20 in the amount of \$3,414.00 must be refunded to Plaintiff. See *Gisbrecht*, 535 U.S.
21 at 796 ("Congress harmonized fees payable by the Government under EAJA with
22 fees payable under § 406(b) out of the claimant's past-due Social Security benefits
23 in this manner: Fee awards may be made under both prescriptions, but the
24 claimant's attorney must refund to the claimant the amount of the smaller fee."
25 (internal quotation marks, citation, and alterations omitted)).


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IT IS SO ORDERED.


Honorable Barry Ted Moskowitz
United States District Judge